

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1971 Elections
SPONSOR(S): Procedures and Harrington
TIED BILLS: HB 1973 (pub. rec. exemption)

IDEN./SIM. BILLS: CS/SB 3004

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|------------------------------|-----------|----------|----------------|
| 1) Ethics & Elections (Sub.) | 6 Y, 3 N | Mitchell | Randle |
| 2) Procedures | 27 Y, 4 N | Mitchell | Randle |
| 3) | | | |
| 4) | | | |
| 5) | | | |

SUMMARY ANALYSIS

The Florida Legislature has made a number of changes to the Florida Election Code (Code)¹ since the 2000 Presidential Election. Many election provisions have lost their usefulness or application following these changes. The proposed committee bill (PCB or bill) makes a number of conforming, technical and clarifying changes to the Code that have been recommended by the Division of Elections (Division) in the following areas:

- Definitions of election-related terms;
- Uniform Statewide Registration Application;
- Candidate petition process;
- Opening and closing of the polls;
- Submission of party nominees after the ballots are printed or the machines are programmed;
- Instruction cards that are placed in polling places;
- Poll watchers;
- Ballot specifications;
- Information on constitutional amendments in precincts;
- Printing of a candidate's name on the ballot;
- Mailing ballots upon receipt of a federal postcard application;
- Election boards for precincts;
- Canvassing board duties;
- Early voting;
- Witness requirements for absentee ballots;
- Campaign finance for candidates of fire control districts; and
- Electronic filing and deadlines for campaign reports.

This PCB is effective upon becoming a law, except as provided therein.

Four amendments were adopted on April 15, 2004. See "Amendments/Committee Substitute Changes."

¹ chapters 97-106, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

The changes proposed in this PCB have been recommended by the Division and affect the way that elections are administered and conducted. Most are technical in nature. During the 2003 legislative session, an almost identical bill (PCB PR 03-10) was heard by the Subcommittee on Ethics & Elections and the Committee on Procedures. The PCB passed both committees without any objection.² A section-by-section analysis follows.

C. SECTION DIRECTORY:

Section 1. The definition of “paper ballot” and references to that term in section 97.021, F.S., are changed to “marksense ballot” and a new definition of “early voting” has been added in s. 97.021(8), F.S.

Section 2. Section 97.052, F.S., is amended to clarify that the voter registration application can be used for updating a voter signature and to expand the number of entities that may reproduce a copy of the voter registration form.

Sections 3-6. Effective January 1, 2005, the alternative method for candidates to qualify has been completely reworked. Section 99.095, F.S., has been amended so that it applies to all candidates. The redundant or unnecessary requirements in ss. 99.061, 99.0955 and 99.096, were then deleted. Section 105.031, F.S., relating to judicial candidates, is amended to conform to these changes. The following changes were made to the process:

- the requirement that a candidate file an oath indicating that he or she is going to qualify by the petition method has been removed;
- the restriction on not being able to circulate petitions prior to the first Tuesday after the first Monday in January of the election year has been removed and replaced with the requirement that signatures may not be obtained until the campaign treasurer is appointed;
- the date for submission of candidate petitions to supervisors for verification has been moved up one week; and
- the date for supervisors to certify the number of valid petitions has been moved up one week.

² The votes were: 7-0 in the Subcommittee on Ethics and Elections; 28-0 in the Committee on Procedures.

Section 7. Language has been added to s. 100.011, F.S., to clarify that if an elector is in line at the time the polls close, he or she will be allowed to vote. This has been the practice in Florida, but has never been clarified in the Code.

Section 8. Section 100.111, F.S., is amended to revise the procedures under which a candidate's name is stricken from the ballot when ballots have already been printed or programmed into the machines.

Section 9. Section 101.015, F.S., to require each supervisor of elections to establish procedures for accuracy and security relating to early voting in s. 101.657, F.S.

Section 10. Section 101.031, F.S., is amended to delete the requirement for the Division to provide two copies of the instructions to electors per precinct to the supervisors. Supervisors will be permitted to request the number they need so that they can provide the appropriate number to the precincts in their respective counties.

Sections 11-12. Effective January 1, 2006, ss. 101.048 and 101.049, F.S., are amended to require that touchscreen voting systems must permit persons with disabilities to vote a provisional ballot on such systems.

Section 13. Section 101.131, F.S., is amended to allow one poll watcher for each polling room rather than for each precinct. The section is also amended to allow political committees registered to support or oppose an issue on the ballot to have one watcher in each polling room.

Section 14. Section 101.151, F.S., is amended to change the reference from paper ballots to marksense ballots.

Section 15. Section 101.171, F.S., is amended to allow a copy of constitutional amendments that are provided at the polling place to be in either poster or booklet form.

Section 16. Consistent with the change made in section 8 of the bill, s. 101.253, F.S., is amended to revise the procedures under which a candidate's name is stricken from the ballot when ballots have already been printed or programmed into the machines. The new procedures would allow the supervisor to do one of the following:

- Reprint or reprogram the ballots;
- Strike through the name of a candidate that has withdrawn, died, or been removed and if, necessary, insert the name of a new nominee; or
- Provide notice in a newspaper of general circulation and post a notice in each voting booth explaining the consequences of a vote for the former candidate. A notice to that effect would also be required to be sent with each absentee ballot mailed.

Sections 17-18. Sections 101.294 and 101.295, F.S., are amended to prohibit vendors of voting equipment from providing any uncertified voting system, voting system component, or voting system upgrade in this state. It also provides for a 3rd degree felony penalty for violations.

Section 19. Effective January 1, 2006, s. 101.5606, F.S., is amended to require all electronic voter interface devices to allow voters to cast both regular and provisional ballots.

Section 20. Section 101.5608, F.S., is amended to change the reference from paper ballots to marksense ballots.

Section 21. Section 101.5612, F.S., is amended to require testing of tabulating equipment not more than 10 days before commencement of early voting pursuant to s. 101.657, F.S.

Section 22. Section 101.5613, F.S., is amended to require a representative of the supervisor of elections to examine voting equipment for purposes of early voting.

Section 23. Section 101.595, F.S., is amended to require information on the number of overvotes and undervotes in either the Presidential race or the governor's race (whichever is applicable), rather than the first race appearing on the ballot.

Section 24. Section 101.6103, F.S., is amended to specifically allow the canvassing board to begin the canvass of mail ballots at 7 a.m. on the fourth day before a mail ballot election. It also clarifies that no results shall be released until 7 p.m. on election day.

Section 25. Section 101.62, F.S., is amended to delete the provision that if a request for an absentee ballot is received after the Friday before the election from an overseas voter, the supervisor does not send the absentee ballot. Because electronic transmission of ballots is now available, an overseas voter can receive, vote, and return the ballot in a shorter period of time. This section is also amended to clarify that an advance absentee ballot to overseas voters is not required, if the regular absentee ballots are mailed 45 days before the election.

Sections 26-27. Sections 101.64, 101.65, F.S., are amended to delete the requirement that an absentee ballot contain the signature and address of a witness who is 18 years of age or older. Section 101.65, F.S., is also amended to conform to the elimination of the witness requirement for UOCAVA voters.

Section 28. Section 101.657, F.S., is amended to require supervisors of elections to provide early voting in their permanent and branch offices. In order for a branch office to be used for early voting, it must have been designated as a permanent facility at least one year prior to the election. The section also permits a supervisor of elections to use city halls and public libraries as early voting sites. Early voting shall begin on the 15th day before an election and end at 5 p.m. before an election, and shall be available for at least eight hours per day during those periods.

Section 29. Section 101.68, F.S., is amended to provide that an absentee ballot shall not be considered illegal if it does not contain the address and signature of an attesting witness. The witness requirement was deleted in sections 25 and 26 of the bill.

Section 30. Section 101.6921, F.S., is amended to delete the witness requirement for special absentee ballots for first-time voters.

Section 31. Section 101.6923, F.S., is amended to provide that the instructions sent with absentee ballots to certain first-time voters be in *substantially* the form set out in statute. This will allow minor deviation to accommodate different voting systems.

Section 32. Section 101.694, F.S., is amended to delete the specifications for envelopes being sent to absent electors overseas. This is replaced with a requirement that the Division determine the specifications, after consulting with the Federal Voting Assistance Program and the U. S. Postal Service.

Section 33. Section 101.6952, F.S., is amended to delete the witness requirement for absentee ballots of overseas voters.

Section 34. Section 101.697, F.S., is amended to clarify that the Division will make the determination of which means of electronic transmission of absentee ballots are secure prior to adopting a rule allowing the electronic transmission of such ballots to overseas voters.

Section 35. Section 102.012, F.S., is amended to remove references to two election boards being appointed for each election. This is an obsolete provision that is no longer used.

Section 36. There was some confusion during the 2002 election with regard to whether election results needed to be posted at the polls, particularly with regard to counties using touch screen voting systems. Section 102.071, F.S., is amended to require the results to be posted in all counties. The number of certificates completed at the polling place is changed from three to one, with the single copy transmitted to the supervisor. The copy currently required to be filed with the county court judge is eliminated.

Section 37. Section 102.111, F.S., is amended to allow the Elections Canvassing Commission to delegate the authority to order recounts to the chief election officer. There is no discretion in the statutes for ordering recounts so there is no need for the Elections Canvassing Commission to hold a public meeting for this purpose.

Section 38. Section 102.141, F.S., is amended to clarify that the Elections Canvassing Commission is the board responsible for ordering federal, state and multicounty recounts. It also provides that unofficial returns in a recount must be provided by a canvassing board to the Department of State on the *fourth* day after an election (rather than the third day under current law).

Section 39. Section 102.168, F.S., is amended to clarify that under an election contest, the complaint must be filed with the clerk of the circuit court within 10 days after midnight of the date the last board responsible for certifying the results officially certifies those results; and clarifies the proper party defendants, depending on the type of election (county canvassing board versus the Elections Canvassing Commission).

Section 40. Section 105.031, F.S., is amended to correct a provision relating to write-in candidates for school board.

Section 41. Section 105.035, F.S., is amended, effective January 1, 2005, to provide that candidates for judicial office and school board member may begin collecting petition signatures after they have filed a designation of campaign depository.

Section 42. A new definition of "eliminated candidate" is added to s. 106.011, F.S., to allow candidates who have filed a timely contest of election to continue to collect and spend money from their campaign account solely for the purpose of paying legal fees and costs associated with the contest.

Section 43. Section 106.021, F.S., is amended to expand the types of expenses that may be reimbursed from a campaign account. Under current law, a candidate or individual may only be reimbursed for travel, food and beverage, office supplies, and certain mementos. The section would now permit a candidate or individual to be reimbursed for expenses incurred "in connection with the campaign or activities of the political committee."

Section 44. Section 106.023, F.S., is amended to provide that execution and filing of the "Statement of Candidate" does not in and of itself create a presumption that a candidate has willfully violated ch. 104 or ch. 106, F.S.

Section 45. Section 106.04, F.S., is amended to make the late-filing fines assessed against committees of continuous existence consistent with those of political committees. The section is also amended to provide that such fines will be deposited in the General Revenue fund.

Section 46. Section 106.07, F.S., is amended to provide that if a campaign report is received by the filing officer within 5 days of the designated due date shall be deemed timely filed *unless* the postmark indicates that the report was mailed after the due date. It also amends section

106.07(4)(a)13., F.S., to provide that the primary purpose of an indirect expenditure shall be reported. It also provides that fines for failure to file campaign reports of candidates and political committees shall be deposited in the General Revenue fund and that the Florida Elections Commission shall consider the criteria in s. 106.265(1), F.S., when determining the amount of a fine to be waived, if any, for late-filing a campaign report.

Section 47. Effective January 1, 2005, s. 106.07, F.S., is amended to include a reference to new s. 106.0705, F.S., which will require electronic filing of campaign reports. This section also contains conforming amendments.

Section 48. Effective January 1, 2005, s. 106.0705, F.S., is created to require electronic filing of campaign reports with the Division for candidates, committees and political parties. The electronic filing system will be Internet-based, and permit direct entry and upload of campaign finance information.

Section 49. Effective January 1, 2005, s. 106.075, F.S., relating to reporting loans, is amended to clarify that this provision relates to personal loans which were used for campaign purposes.

Section 50. Effective January 1, 2005, s. 106.08, F.S., is amended to prohibit candidates from making expenditures from their campaign account to receive an endorsement from any person or group.

Section 51. Effective January 1, 2005, s. 106.087, F.S., is amended to eliminate committees of continuous existence (CCE's) from the provision relating to independent expenditures. CCE's are currently prohibited from making independent expenditures in section 106.04, F.S. The current version of s. 106.087, F.S., creates confusion and implies that such independent expenditures by CCE's are permitted.

Section 52. Effective January 1, 2005, s. 106.09, F.S., is amended to clarify that a money order is the same as cash or a cashier's check for the purpose of the "cash" contribution limit of \$100.

Section 53. Effective January 1, 2005, s. 106.11, F.S., is amended to provide that the list of persons authorized to use debit cards in campaigns should be filed with the appropriate filing officer, not necessarily with the Division.

Section 54. Section 106.141, F.S., is amended to provide that all reimbursements for election assessments shall be deposited in the General Revenue fund.

Section 55. Section 106.25, F.S., is amended to provide that sworn complaints must be based upon personal knowledge or independent research of the complainant, and that only allegations contained in the complaint can be investigated. The section is also amended to allow respondents to appear before the Florida Elections Commission in a probable cause hearing.

Section 56. Section 106.29, F.S., is amended to provide that late-filing fines that are assessed against political parties shall be deposited in the General Revenue fund.

Section 57. Effective January 1, 2005, s. 106.29, F.S., is amended relating to filing of political party reports, consistent with the new electronic filing requirements of s. 106.0705, F.S.

Section 58. Section 191.005, F.S., is amended to require candidates for commissioner of a special fire control district who collect or spend campaign contributions to conduct their campaign in accordance with ch. 106, F.S. Unopposed candidates who accept no contributions nor make any expenditures other than for petition verification or the \$25 filing fee, are not required to open a campaign account nor appoint a campaign treasurer.

Section 59. Section 287.057, F.S., is amended to allow voter education activities of the Department of State and the Supervisors of Elections to be exempt from the state competitive bidding requirements.

Section 60. Language is included to require all voting systems certified after July 1, 2005, to meet the requirements of s. 101.56062, F.S., which sets forth the standards for accessible voting systems. In addition, there is language requiring that any purchase of a voting system after July 1, 2004, must include a contract for future upgrades and equipment to meet the requirements of s. 101.56062. Finally, all voting systems in use on or after January 1, 2006 must meet the requirements in s. 101.56062.

Section 61. Section 22 of chapter 2002-281, Laws of Florida, is amended to change the effective dates in the Voting Accessibility Bill (Chapter 2002-281, L.O.F.), consistent with the provisions of the federal Help America Vote Act of 2002.

Section 62. Sections 106.085 and 106.144, F.S., were ruled unconstitutional and are being repealed. Section 106.085, F.S., relates to prior notice requirements for independent expenditures and section 106.144, F.S., requires notice requirements for groups doing endorsements. Other repealed sections are ss. 98.181, 101.635 and 102.061, F.S., which are obsolete.

Section 63. This section changes the effective date language in the bill to clarify that the changes to ch. 106, F.S., are applicable to all pending and future cases of the Florida Elections Commission, as of the effective date of the bill.

Section 64. The section makes the bill effective upon becoming law, except as otherwise provided therein.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
2. Expenditures: There may be costs incurred by the Division of Elections for the development and implementation of the electronic filing system. Division staff has represented that the costs will be minimal.
- 3.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Election laws are exempt from the mandates of Art. VII, s. 18, of the Florida Constitution.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES